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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

July 1, 2005

DOCKET NO.
05-00174

*In Re: Petition of ITC^DeltaCom Communications,
Inc. for Mediation and Dispute Resolution*

)
) Docket No. 05- _____

**PETITION OF ITC^DELTACOM COMMUNICATIONS, INC. FOR MEDIATION AND
DISPUTE RESOLUTION**

COMES NOW ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") pursuant to its Tennessee interconnection agreement ("ICA" or "Agreement") with BellSouth Telecommunications, Inc. ("BellSouth") and the Telecommunications Act of 1996 ("Act") and hereby petitions the Tennessee Regulatory Authority ("TRA") for mediation and dispute resolution of certain issues for which the parties have been unable to reach a negotiated resolution. In support of this Petition, ITC^DeltaCom shows as follows:

I. BACKGROUND AND INTRODUCTION

1.

In addition to BellSouth's obligations under the Agreement, pursuant to Tennessee law and the Act, BellSouth is required to provide to requesting telecommunications carriers, through negotiation or otherwise, interconnection, access to unbundled network elements ("UNEs"), collocation, number portability, dialing parity, access to rights-of-way, reciprocal compensation, and resale, among other things. *See e.g.* 47 U.S.C. §§ 251(b)-(c). The terms and conditions of interconnection must comply with Tennessee law as well as the provisions of Sections 251, 252 and 271 of the Act. *See* 47 U.S.C. § 251(c). Specifically, Sections 252(d) and 271 of the Act govern the pricing of UNEs, interconnection, reciprocal compensation, and resale services.

2.

Petitioner is a competitive local exchange carrier ("CLEC") formed under the laws of the State of Alabama and having its principal place of business at 7037 Old Madison Pike, Suite 400, Huntsville, Alabama 35806. ITC^DeltaCom currently provides or is authorized to provide voice and data, local, long distance, and bundled telecommunications services in several states. In Tennessee, ITC^DeltaCom is authorized by the TRA to provide facilities-based and resold competitive local exchange telecommunications services pursuant to authorization granted in Docket No. 96-01431, dated January 2, 1997, and long distance telecommunications services pursuant to authorization granted in Docket No. 95-02826, dated September 8, 1995.

3.

Prior to filing this Petition, ITC^DeltaCom and BellSouth participated in numerous meetings by telephone to discuss the changes necessary to incorporate the Federal Communications Commission's ("FCC") actions including the TRO, TRRO, and FTTH/FTTC. Additionally, BellSouth has requested the terms of its relationship with ITC^DeltaCom be changed in its Petition for Preemption of regulation of ADSL, as well as pursuant to the FCC's Pick and Choose Order.¹ ITC^DeltaCom and BellSouth have not reached agreement on a large number of issues.

¹The critical decisions are cited herein are as follows *In the Matter of Review of the Section 251 Unbundling Obligations of ILECs, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No 01-338, CC Docket No 96-98, CC Docket No 98-147, Report and Order And Order on Remand and NPRM, (rel Aug 21, 2003) ("TRO")

In the Matter of Unbundled Access of Network Elements and Review of the Section 251 Unbundling Obligations of the ILECs, WC Docket No 04-313 and CC Docket No 01-338, Order on Remand (rel Feb 4, 2005) ("TRRO")

In the Matter of BellSouth Telecommunications, Inc , Petition for Forbearance Under 47 U S C 160(c), Memorandum Opinion and Order, WC Docket 04-48 (rel Oct 27, 2004) ("FTTC/FTTH")

In the Matter of BellSouth Telecommunications, Inc , Request for Declaratory Ruling that State Commissions May Not Regulate Broadband Internet Access Services By Requiring BellSouth to Provide Wholesale or Retail Broadband Service to Competitive LEC UNE Voice Customers, WC Docket No 03-251 (Memorandum Opinion and Order and Notice of Inquiry, (rel March 25, 2005) ("ADSL Decision")

In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Second Report and Order, CC Docket No 01-338 (rel July 13, 2004) ("Pick and Choose Order")

4.

Under the Act, parties to an interconnection negotiation have the right to petition the TRA for arbitration or to seek mediation regarding any open issue whenever negotiations between them fail to yield an agreement. *See* 47 U.S.C. § 252(b). The centerpiece of the Act is the bilateral relationship between the incumbent monopoly bottleneck telecommunications carriers (BellSouth) and would be competitors (ITC^DeltaCom).

5.

The FCC established the appropriate standard for arbitration and mediation under Sections 251 and 252 of the Act in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996) (“*Local Competition Order*”). Pursuant to the *Local Competition Order*, the TRA must do the following: (1) ensure resolution and conditions satisfying Section 251 of the Act, including the regulations promulgated by the FCC; and (2) establish rates for interconnection and UNEs according to Section 252(d) of the Act. The regulations promulgated by the FCC include the TRRO.

6.

The TRA must make an affirmative determination that the rates, terms, and conditions that it prescribes in this arbitration proceeding for interconnection are consistent with the requirements of Section 251 (b)-(c) and Section 252(d) of the Act.

7.

Section 251(b) of the Act, 47 U.S.C. § 251(b), states that BellSouth has the following duties:

- (1) Resale - The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.
- (2) Number portability - The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission [FCC].

- (3) Dialing parity - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.
- (4) Access to rights-of-way - The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title [the Act].
- (5) Reciprocal compensation - The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

8.

Section 251(c) of the Act states that BellSouth has the following additional duties:

- (1) Duty to negotiate — The duty to negotiate in good faith in accordance with section 252 of this title [the Act] the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.
- (2) Interconnection — The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network —
 - (A) for the transmission and routing of telephone exchange service and exchange access;
 - (B) at any technically feasible point within the carrier's network;
 - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
 - (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.
- (3) Unbundled access — The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network

elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

- (4) Resale — The duty —
 - (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
 - (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.
- (5) Notice of changes — The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.
- (6) Collocation — The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

9.

Section 252(d) of the Act and regulations promulgated pursuant to Section 271 of the Act set forth the applicable pricing standards for interconnection and network element charges, as well as for collocation, transport, and termination of traffic. Section 252(d)(1) of the Act states, in pertinent part, that, “determinations by a State commission of the just and reasonable rate for the interconnection of

facilities and equipment . . . and the just and reasonable rate for network elements . . . shall be (i) based on the cost (determined by reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable); and (ii) nondiscriminatory; and [(iii)] may include a reasonable profit.” 47 U.S.C. § 252(d)(1).

10.

ITC^DeltaCom has attempted to exhaustively identify all the disputed issues, however, additional issues may arise and become further refined while the parties continue their interconnection negotiations. Accordingly, ITC^DeltaCom reserves the right to amend, supplement, or modify its Petition in the event additional disputed issues are identified or existing disputed issues are modified during the course of negotiations.

II. THE AGREEMENT

11.

The Agreement states in part at Section 16.4:

In the event that any effective legislative, regulatory, judicial or other legal action **materially affects any material terms of this Agreement**, or the ability of ITC^DeltaCom or BellSouth to perform any material terms of this Agreement, ITC^DeltaCom or BellSouth may, on thirty (30) days’ written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. **In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in Section 11.** (Emphasis added).

12.

The Agreement states in part at Section 11:

Resolution of Disputes. Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this

Agreement, **either Party may petition the Commission for a resolution of the dispute**; provided, however, that to the extent any issue disputed hereunder involves issues beyond the scope of authority or jurisdiction of the Commission, the parties may seek initial resolution of such dispute in another appropriate forum. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement. Each Party shall bear its own costs when seeking Commission or judicial review of any ruling concerning this Agreement. (Emphasis added).

13.

On February 4, 2005 the FCC Issued its Triennial Review Remand Order ("TRRO"). On August 21, 2003, the FCC issued the TRO. Portions of the TRRO and TRO had a material effect on the material terms of the Agreement giving rise to issues relating to the implementation of the Agreement. The FCC also issued the "Pick and Choose Order" on July 13, 2004, and orders regarding FTTC/FTTH and ADSL. These orders trigger the dispute resolution provisions excerpted above.

14.

All correspondence, communications and other issues should be directed to:

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III. ISSUES TO BE MEDIATED AND RESOLVED

15.

ITC^DeltaCom requests the TRA appoint a mediator to conduct a Mediation for purposes of facilitating settlement of the issues enumerated below. For issues upon which the parties remain at an impasse after such mediation, the TRA should make findings of fact and conclusions of law. Contract language which would resolve each of these issues consistent with Tennessee and federal law is attached hereto as Exhibit A.

16.

Issue 1: Section 271 Unbundled Network Elements (“UNEs”)

Statement of Issue

Does the TRA have the authority under state law, or pursuant to Section 271 of the Act or any other federal law other than Section 251 of the Act, to require BellSouth to provide certain network elements? If the TRA finds it has authority, what should the rates be and what language should be included in the Agreement governing the terms and conditions associated with those network elements?

Summary of ITC^DeltaCom position:

The TRA has authority under state law and Section 271 of the Act to establish rates, terms and conditions for the following network elements: poles, ducts, and right of way, loop, transport, local switching, 911/E911, OS/DA, white page directory listings, databases and associated signaling. Additionally, Section 271 of the Act imposes requirements for dialing parity, interconnection, reciprocal compensation, and resale. Contract language relating to these 271 elements which should apply to ITC^DeltaCom and BellSouth is at Exhibit A, Sections 1.1, 1.4, 1.11.1, 1.15, 2.2.1., 2.1.4.,

2.1.5.7., 2.2.4.1.1., 2.2.4.11-13, 2.2.12, 5.5.1, 7.1.1.1., 10.1 -10.1.2.1.1, 11.1.2.1, 11.8, 11.8.5-11.8.6, 12.5.1, 12.5.9, 12.5.12, 12.7.1, 13, 14, 14.3, 14.6, 14.7, 15, 17, 18, 18.7, 18.8.

17.

Issue 2: Cross Connect Fee

Statement of Issue

Where ITC^DeltaCom seeks to migrate service currently provided by BellSouth, to either an alternative competitive provider (“ACP”) or ITC^DeltaCom’s collocation sites located in a BellSouth Central Office, should BellSouth be permitted to charge a “rearrangement fee” at a rate which exceeds the cost of installation of a cross-connect? What should be the rate and what language should be included in the Agreement relating to migration to an ACP or to ITC^DeltaCom collocations sites?

Summary of ITC^DeltaCom position:

ITC^DeltaCom must be free to migrate its services to either its collocation space or to an ACP. Allowing this migration at a cost-based rate will facilitate competition in the Tennessee local exchange markets. BellSouth should not be authorized to charge ITC^DeltaCom an installation or disconnect charge. BellSouth seeks to charge non-recurring installation rates from its interstate access tariffs. To allow BellSouth to apply a non-recurring rate taken from its interstate access tariffs would result in a windfall for BellSouth. The TRA should adopt the language at Exhibit A, Sections 2.1.5.4, 12.5.9, 12.5.19, and 12.5.20.

Issue 3: Delivery of UNEs to Third Party Collocation SiteStatement of Issue

Should BellSouth be required to deliver UNEs to a third party collocation site when ITC^DeltaCom has provided proof of consent from the third party through a blanket Letter of Authority?

Summary of ITC^DeltaCom position:

This issue has been the subject of extensive negotiation and litigation over the last three years. BellSouth has rejected ITC^DeltaCom orders and required a separate Letter of Authorization (“LOA”) for each and every order to the same collocation site owned by the same third party. ITC^DeltaCom acknowledges its obligations to provide the connecting facility assignment (“CFA”) to enable correct provisioning and inventory of facilities, however, the requirement of a separate LOA is unduly burdensome and will prohibit CLECs from utilizing electronic delivery of orders. A blanket LOA accomplishes the same purpose and does not create unreasonable administrative burdens. Language relating to this issue that should be included in the Agreement can be found at Exhibit A, Section 1.4.

Issue 4: Specific DefinitionsStatement of Issue

Should the Agreement include specific definitions (*e.g.* business line, fiber-based collocator) for purposes of making impairment decisions for Tennessee? If so, what should be those definitions and what procedures should be used for purposes of making those determinations?

Summary of ITC^DeltaCom position:

The TRA should articulate specific and precise definitions for purposes of making high capacity loop and transport impairment designations. By doing so, the TRA will help further certainty and reliability. The process by which the TRA should make these determinations should include a regular filing by BellSouth and a full examination by the TRA and ITC^DeltaCom with discovery rights for the parties. Language which establishes such definitions is at Exhibit A, Sections 1.2, 2.1.5.1, 12.5.

20.

Issue 5: Tariffed Services to Collocation Sites

Statement of Issue

Should BellSouth be required to deliver any tariffed services requested by ITC^DeltaCom to a collocation site?

Summary of ITC^DeltaCom position:

Any tariffed service offered by BellSouth and ordered by ITC^DeltaCom should be available for delivery by BellSouth to ITC^DeltaCom's collocation sites or ACP/third party sites. Language allowing this arrangement has been included in ITC^DeltaCom's past two interconnection agreements with BellSouth and approved by the TRA. BellSouth agreed to this language prior to the arbitration filing in February, 2003. For that reason, ITC^DeltaCom did not raise this as an issue in the most recent arbitration case. ITC^DeltaCom's expectation that BellSouth would again agree to this arrangement has been met with disappointment. To disallow this arrangement would require ITC^DeltaCom to order one collocation as a UNE and another as access. This highly inefficient requirement violates the FCC's pronouncement expressly permitting commingling. Language covering this issue is at Exhibit A, Section 1.7.

21.

Issue 6:

Statement of Issue

Whether the Agreement should include language expressly stating that the requirements of the TRO and the TRRO apply to the Agreement?

Summary of ITC^DeltaCom position:

The ICA should include language which expressly incorporates the TRO and TRRO requirements. Such language can be found at Exhibit A, Section 1.10.3. BellSouth has offered no valid reason to not include this language.

22.

Issue 7: Future Changes to Availability or Pricing of Network Elements

Statement of Issue

Should the parties be required to negotiate an amendment prior to BellSouth changing any rates terms or conditions relating to Section 251 UNEs?

Summary of ITC^DeltaCom position:

The Agreement should be amended to accommodate future changes to the availability or pricing of UNEs. If an element is no longer available at TELRIC rates, ITC^DeltaCom should be permitted adequate time to negotiate a just and reasonable cost-based rate (if it is a Section 271 element) or find alternative arrangements. BellSouth wants to be allowed to modify the contract unilaterally without any negotiation of an amendment. Language should be adopted by the TRA similar to that attached at Exhibit A, Section 1.10.5.

Issue 8: Conversion of Wholesale Service to UNE and UNE to Wholesale ServicesStatement of Issue

What rates, terms and conditions should apply to conversion of wholesale services provided by BellSouth to UNEs provided by BellSouth and vice versa?

Summary of ITC^DeltaCom position:

The FCC recognized that with the removal of some elements from Section 251 TELRIC pricing, CLECs would be required to quickly and seamlessly move from a UNE TELRIC priced element to a wholesale offering. BellSouth should not be permitted to assess fees for a billing change from TELRIC to Section 271 pricing or other wholesale pricing. Additionally, in those instances where UNEs or combinations of UNEs are available but the ILECs refused to allow conversion from wholesale to UNE without the CLEC paying a full non-recurring installation charge, the FCC has made it clear that non-recurring charges cannot be imposed. *See* TRO Para. 586-587. The rates, terms and conditions offered must be just and reasonable, compliant with federal and state law and promote competition. Such rates, terms and conditions are included in the language at Exhibit A, Section 1.11.

Issue 9: Conversions from Wholesale to UNEStatement of Issue

Whether the conversion of facilities from special access or other pricing arrangements to UNE prices should be made effective back to August 23, 2003 (effective date of the TRO)?

Summary of ITC^DeltaCom position:

Yes. BellSouth refused ITC^DeltaCom's request to include negotiated language allowing ITC^DeltaCom to convert special access services to UNEs without requiring a physical disconnect of

the services and paying a new installation/disconnect non-recurring charge. In other words, BellSouth demanded that ITC^DeltaCom order and pay for the physical disconnection of a DS1 loop ordered pursuant to tariff and then place a new order for a DS1 UNE loop pursuant to the Agreement. ITC^DeltaCom sought arbitration of this issue and the associated rate for such a conversion in February, 2003. The FCC addressed this issue directly in the TRO stating that such conversions should take place seamlessly. Additionally, the FCC stated that if a carrier had a pending request to the ILEC, the ILEC would be financially responsible back to the effective date of the TRO (August 2003). ITC^DeltaCom seeks compensation for those circuits that it should have been allowed to convert to UNEs effective as of August, 2003. Contract language relating to this issue is at Exhibit A, Section 1.11.3.

25.

Issue 10: Notice Relating to Disconnection of Section 251 UNEs

Statement of Issue

Whether BellSouth should be required to provide notice to ITC^DeltaCom prior to disconnection of UNEs?

Summary of ITC^DeltaCom position:

BellSouth should be required to provide adequate notice to ITC^DeltaCom prior to disconnection of any services. Otherwise, Tennessee consumers may experience service disruption. The TRA has proposed a rule requiring the underlying carrier to provide notice to the TRA prior to such disconnection. See Docket No. 00-00873. ITC^DeltaCom seeks language that will protect Tennessee customers from unilateral unexpected disconnection by BellSouth. Language regarding this issue is at Section 1.12 of Exhibit A and is intended to cover all elements.

Issue 11: Definition of “Reasonable Inquiry” in Process for Self-Certification of DS1 LoopsStatement of Issue

Whether the Agreement should include a specific definition of “reasonable inquiry” for purposes of governing the self-certification of DS1 Loops process? Is so, how should “reasonable inquiry” be defined?

Summary of ITC^DeltaCom position:

The Agreement should be specific. This is especially true given the history of disagreements between ITC^DeltaCom and BellSouth. The language at Sections 1.13-1.13.1 of Exhibit A provides a clear definition of “reasonable inquiry.”

Issue 12: ComminglingStatement of Issue

What language should be incorporated into the Agreement to capture the FCC’s policy regarding commingling? Should commingling arrangements be made retroactive back to the date of ITC^DeltaCom’s arbitration petition (February, 2003 or August, 2003)? What commingling configurations should BellSouth be required to provide?

Summary of ITC^DeltaCom position:

Arbitration Issue No. 36 in ITC^DeltaCom’s most recent Section 252 arbitration covered this same issue. ITC^DeltaCom’s goal is to prevent unnecessary or duplicative network architecture. For example, currently, if ITC^DeltaCom has DS3 transport ordered via the BellSouth tariff and wishes to connect to UNE DS1 loops, BellSouth will reject the order in all states except Tennessee. ITC^DeltaCom sought this functionality because it was faced with ordering UNE DS3 transport to

connect to UNE DS1 loops and then being required to immediately order tariffed DS3 transport to connect to tariffed DS1 loops. This problem benefited BellSouth because it required the ordering of services that could not be efficiently utilized. The FCC, in the TRO, prescribed commingling. BellSouth shifted its position after the TRO (August, 2003). It now argues it is not required to commingle a Section 251 UNE with a Section 271 element. The FCC held that ILECs have to permit the commingling of Section 251 elements with wholesale services. A wholesale service must include Section 271 elements. If not, ITC^DeltaCom would not be able to obtain a commingled unbundled DS1 loop with Section 271 transport (also known as a commingled EEL).

Additionally, despite including "commingling" in its interstate tariff in December, 2003, BellSouth has failed to implement an electronic process to place orders for commingled services. Although ITC^DeltaCom obtained commingling language in its Georgia interconnection agreement in the later part of 2004, ITC^DeltaCom struggled for months to obtain any information from BellSouth on how to submit such orders. BellSouth has implemented a manual process for only one service configuration (DSO). ITC^DeltaCom needs a clearly defined set of business rules encompassing DS1 and DS3 as well as DSO products and an electronic ordering process dealing with only one BellSouth support center. ITC^DeltaCom believes the CWINS point of contact will ultimately slow response to complex problems. BellSouth maintains its technicians possess two distinct skill sets, access services and local products. However, ITC^DeltaCom believes the first point of contact should be with the complex support groups. Diagrams of those configurations that involve commingling that ITC^DeltaCom seeks from BellSouth are included as a confidential attachment Exhibit B. Contract language concerning this issue is at Exhibit A, Section 1.15.

Issue 13: Minimum Quality StandardsStatement of Issue

Whether the Agreement should include language providing for minimum quality standards for UNEs and if so, which standards should apply?

Summary of ITC^DeltaCom position:

ITC^DeltaCom seeks language that contractually prevents BellSouth from engaging in activities that would disrupt or degrade the loop. See TRO *para. 294*. Sections 1.3 – 1.10 of Exhibit A refer to the provision of network elements and the associated standards or rules regarding such unbundling. That language should be adopted.

Issue 14: Routine Network ModificationsStatement of Issue

What rates, terms and conditions should apply to Routine Network Modifications?

Summary of ITC^DeltaCom position:

BellSouth should provide Routine Network Modifications for ITC^DeltaCom in the same manner that it provides those modifications for itself. Language that should be included in the Agreement is at Section 1.14 of Exhibit A. BellSouth does not want to include the list of the various types of routine network modifications provided in the rule. ITC^DeltaCom seeks to include the entire list as set out by the FCC. BellSouth wants to negotiate rates and intervals for Routine Network Modifications. ITC^DeltaCom, conversely, is concerned that this should not be yet another opportunity for BellSouth to inflate its rates or double recover. The FCC stated that the tasks involved in these modifications should already be recovered in the recurring and non-recurring rates set by the

state commission. Additionally, the time period for completion of a routine network modification should not be negotiated on an *ad hoc* basis with the typical extensive delays. Rather, negotiations should be completed within the timelines associated with the service being provided.

30.

Issue 15: Fiber to the Home/Curb

Statement of Issue

Whether language governing fiber to the home and fiber to the curb should be reciprocal?

Summary of ITC^DeltaCom position:

ITC^DeltaCom seeks to make it clear that it does not have any obligation to BellSouth to provide access to ITC^DeltaCom's facilities. Language that should be ordered can be found at Exhibit A, Section 2.1.3.1.

31.

Issue 16: Fiber to Home/Curb

Statement of Issue

What obligations should apply to BellSouth when ITC^DeltaCom requests a copper loop that has not yet been retired?

Summary of ITC^DeltaCom position:

The TRA should direct that BellSouth provide a sufficient explanation in support of any decision not to restore copper facilities when requested to do so by ITC^DeltaCom. Language that should be included in the Agreement is at Exhibit at A, Section 2.1.32.

32.

Issue 17: Interval for Replacement of Retired Copper Loops

Statement of Issue

Whether BellSouth's standard interval should apply for purposes or replacement of retired copper loops?

Summary of ITC^DeltaCom position:

BellSouth's standard interval should apply. Contract language expressly providing so should be included in the Agreement.

33.

Issue 18: Access to Hybrid Loops

Statement of Issue

What language should be incorporated into the Agreement that fully and accurately sets forth BellSouth's obligations in providing ITC^DeltaCom a hybrid loop?

Summary of ITC^DeltaCom's position:

The ICA should comprehensively cover issues such as (1) use of the hybrid loop for narrowband and broadband uses and (2) the requirement to provide a technically feasible method of unbundled access to the hybrid loop among others. Language covering these issues is at Exhibit A, Section 2.1.4.

Issue 19: Transition Period and Transition Procedures for DS1 and DS3 High Capacity Loops and Dark Fiber Loops

Statement of Issue

What language should be incorporated into the Agreement to govern the transition period and procedures for DS1 and DS3 high capacity loops and Dark fiber loops? How should a true up be conducted, if a true up is required?

Summary of ITC^DeltaCom position:

There are multiple issues related to the implementation of the transition period including identification of which loops/dark fiber loops are subject to the transition, and under what circumstances, and procedures for completing the transition, and related billing issues. BellSouth has issued a list of allegedly non-impaired wire centers. This list has not been approved by any regulator. ITC^DeltaCom should not be required to rely on BellSouth or an allegedly “independent” auditor hired and paid for by BellSouth as to the accuracy of the non-impairment wire center list. ITC^DeltaCom seeks the contractual right to hire its own auditor on an annual basis to check the accuracy of BellSouth’s list and if BellSouth is in error, BellSouth should be required to pay for the audit.

For those services that are subject to the transitional pricing, if a true up is required, ITC^DeltaCom seeks to pay any amounts associated with the true-up over a period of time as opposed to one lump sum payment.

Finally, aside from the language regarding the transition rate and the transition period for those high capacity loops/dark fiber loops that are no longer impaired, ITC^DeltaCom seeks language that assists with the transfer of those loops. For example, ITC^DeltaCom seeks to submit spreadsheets

listing the affected circuits. Contract language covering this issue is at Exhibit A, Sections 2.1.5-2.1.5.7.

35.

Issue 20: Hot Cut Intervals

Statement of Issue

Should BellSouth be required to honor the language agreed upon in settlement of its Arbitration relating to Hot Cuts?

Summary of ITC^DeltaCom position:

In an abundance of caution, ITC^DeltaCom includes this item because BellSouth has hinted that it seeks to revise language agreed upon in settlement of Arbitration. Language at Exhibit A, 2.2.2.6 should be ordered.

36.

Issue 21: Bulk Migration

Statement of Issue

ITC^DeltaCom is required to transition its base of UNE-P customers to another service (UNE-L, resale, EEL). Should BellSouth be required to comply with the bulk migration guidelines that it filed with the FCC? When BellSouth fails to follow its own migration guidelines filed with the FCC should the Agreement include language that provides ITC^DeltaCom recourse in the form of (a) credits of those NRCs assessed by BellSouth for the failed bulk migration; (b) credits due to the outage suffered by the end user; (c) notification to the end user that ITC^DeltaCom was not at fault for the failed migration; and (d) compensation for resources required to reinstate the service(s) due to premature disconnects or cut failures? What should be the bulk migration guidelines for single line residential customers?

ITC^DeltaCom position:

BellSouth successfully argued to the FCC that their bulk migration process works. BellSouth, however, is unwilling to agree to contract language committing BellSouth to that process. ITC^DeltaCom remains highly skeptical, and therefore, seeks language requiring BellSouth to issue credits and to take responsibility when it fails to meet its own guidelines filed with the FCC. Language covering this issue is at Exhibit A, Section 2.2.12.

37.

Issue 22: Discount on NRCs

Statement of Issue

Should BellSouth be required to provide a 10 percent discount on non-recurring charges associated with bulk migrations which occur between March 11, 2005 and March 11, 2006? Should the discount be effective as of March 11, 2005?

Summary of ITC^ DeltaCom position

Yes. BellSouth stated in its filings to the FCC that it would provide such a discount and the FCC referred to this discount in the TRRO. Language memorializing BellSouth's commitment is at Exhibit A, Section 2.2.12.3.

38.

Issue 23: Access to Universal Digital Carrier ("UDC")

Statement of Issue

Should BellSouth be required to provide access to ITC^DeltaCom to the UDC?

Summary of ITC^DeltaCom position:

ITC^DeltaCom asked for information from BellSouth as to why this element was removed and to cite to the TRO/TRRO orders for support of removing this element. ITC^DeltaCom has not

received an explanation from BellSouth. Language which puts that requirement into effect is at Exhibit A, Sections 2.2.5.1 and 2.2.5.2.

39.

Issue 24: Short and Long Copper Loops

Statement of Issue

Should BellSouth be required to provide short or long copper loops to ITC^DeltaCom?

Summary of ITC^ DeltaCom position:

The TRRO does not relieve BellSouth of its obligation to provide short and long copper loops to ITC^DeltaCom. Language the TRA should order to be included in the Agreement to expressly prohibit BellSouth from escaping this requirement is at Exhibit A, Section 2.3.2.1.

40.

Issue 25: Line Conditioning

Statement of Issue

Should BellSouth be required to perform line conditioning even when not performing a Routine Network Modification and what language should be included to incorporate the requirements of line conditioning?

Summary of ITC^ DeltaCom position:

Line conditioning is the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Examples include, but are not limited to, bridge tap or load coils. Line conditioning may be a Routine Network Modification, but, ITC^DeltaCom should be able to order line conditioning even if it does not fit BellSouth's definition

of a “Routine Network Modification.” Language covering this issue is at Exhibit A at Exhibit B to Attachment 2, Sections 2.4 –2.4.2 and 2.6.1.2.1.

41.

Issue 26: Trouble Reports

Statement of Issue

Should BellSouth be required to provide Trouble Report Test results to ITC^DeltaCom or credit NRCs when a chronic trouble has occurred? And, should language in the Agreement be updated to reflect the TRO statements on this issue?

Summary of ITC^ DeltaCom position:

ITC^DeltaCom should not bear the burden of creating a billing dispute when BellSouth has knowledge of a chronic condition. Although, ITC^DeltaCom and BellSouth should be required to test and report troubles for all the features, functions, and capabilities of conditioned copper lines. Language covering this issue is at Exhibit A Section 2.5; 2.5.1-2.5.2.

42.

Issue 27: Conversion of resold services to other types of services?

Statement of Issue

Should ITC^DeltaCom be permitted to convert resold services to other types of services?

Summary of ITC^ DeltaCom position:

Yes. This language has been in the previously approved ITC^DeltaCom interconnection agreements BellSouth did not raise any issues with this language prior to the filing of the Arbitration petition in February, 2003. ITC^DeltaCom should be permitted to convert resold services to UNEs or combinations of UNEs. Language covering the issue can be found at Exhibit A, Section 2.6.1.3.

Issue 28: Conversion of IDLC LoopsStatement of Issue:

Does the TRO require BellSouth to provide narrowband services over IDLC loops? If other ILECs have identified means by which to offer unbundled loops converted from IDLC without additional analog to digital conversions, does BellSouth retain the burden of offering the same methods?

Summary of ITC^DeltaCom position:

ITC^DeltaCom included in its arbitration an issue relating to conversions of IDLC loops to unbundled loops wherein the loop provided would not be capable of fax, modem or dial up services. The parties negotiated language that, at the time, captured what BellSouth claimed as the only identified technically feasible methods of providing the unbundled loop. In reviewing pleadings related to the TRO, ITC^DeltaCom discovered some carriers (including ILECs) filed comments that appear to indicate that this problem has a technical solution and that some manufacturers have redesigned equipment to address the issue. Language covering this issue is at Exhibit A, Section 2.8.

Issue 29: ULC (Unbundled Loop Concentration System)Statement of Issue:

Should ULC be included in the Agreement?

Summary of ITC^DeltaCom position:

Yes. ITC^DeltaCom has requested BellSouth to provide support for its position that this element should be removed. ITC^DeltaCom has not received any response from Bellsouth from which

it can ascertain the basis of BellSouth's refusal to do so. Language covering this issue is at Section 4 – 4.1.2 of Exhibit A.

45.

Issue 30: USLC Unbundled Sub-Loop Concentration System

Statement of Issue

Should USLC be included in the Agreement?

Summary of ITC^DeltaCom position:

Yes. ITC^DeltaCom has requested BellSouth to provide support for its assertion that USLC should be removed from the Agreement. BellSouth has not provided such support. Language covering this issue is at Section 5.4 of Exhibit A.

46.

Issue 31: Unbundled Subloop Feeder

Statement of Issue

On what rates, terms and conditions should BellSouth be required to provide access to an unbundled subloop feeder at wholesale?

Summary of ITC^ DeltaCom position:

While the TRO may remove this element as a Section 251 requirement, BellSouth must offer this element at wholesale. ITC^DeltaCom requested BellSouth to provide rates, terms and conditions for such a wholesale service. BellSouth has not provided any response. This element should be covered by the ICA. Language which includes this element in the Agreement is at Exhibit A, Section 5.5.

Issue 32: Dark Fiber Loops – Transition Period and Process**Statement of Issue**

On what rates, terms and conditions should BellSouth require access by ITC^DeltaCom to dark fiber loops during the transition period, what language should govern the transition process, and what happens to existing dark fiber loops? What should be the rates terms and conditions for Section 271 dark fiber loops?

Summary of ITC^DeltaCom position:

ITC^DeltaCom has existing dark fiber loops in service. ITC^DeltaCom has proposed language for the transition period rates, terms and conditions. Additionally, ITC^DeltaCom seeks to convert those dark fiber loops to Section 271 rates, terms and conditions. Language covering this issue is at Exhibit A, Sections 7 - 7.2.6.

Issue 33: Notices of Network Modification**Statement of Issue**

What obligations does BellSouth have to ITC^DeltaCom if a network modification will affect ITC^DeltaCom or its customers? What terms and conditions should apply in such circumstances?

Summary of ITC^DeltaCom position:

BellSouth should be required to maintain the required characteristics of the elements purchased by ITC^DeltaCom for a period of not more than 12 months, exclusive of the notice period, unless the parties agree otherwise. Language covering the issue is at Exhibit A, Section 8.1.4.5.

Issue 34: Digital Subscriber LineStatement of Issue

Should BellSouth be required to provide DSL service on resold access lines? What terms and limitations should apply to BellSouth's discontinuance of DSL UNE-P customers?

Summary of ITC^DeltaCom position:

In those states where ITC^DeltaCom has an existing base of customers who also purchase ADSL from BellSouth, it would be extremely disruptive for BellSouth to cease service without BellSouth providing notice to those end users. ITC^DeltaCom seeks indemnification language that BellSouth will be responsible for any end user suits filed as a result of any BellSouth actions taken with proper notice. BellSouth has previously testified in Tennessee that it will provide DSL over resold lines. Exhibit A, Section 8.2 includes language memorializing this commitment.

Issue 35: Line SplittingStatement of Issue

What rates, terms and conditions should apply to line splitting? Should ITC^DeltaCom be required to indemnify Bellsouth with regard to issues related to line splitting?

Summary of ITC^DeltaCom position:

ITC^DeltaCom has proposed language related to line splitting. It is unclear to ITC^DeltaCom what business rules/procedures should continue to be included in the Agreement. ITC^DeltaCom should not be required to indemnify BellSouth when BellSouth provides line splitting. Language covering this issue is at Section 9 of Exhibit C.

Issue 36: Transition Period for Switching/UNE-P (Section 251 Loop/Port Combination)Statement of Issue

Whether embedded base limitations prohibit CLECs from adding a line or merging with another company when the end user customer was receiving service from a CLEC via UNE-P prior to March 11, 2005? What terms and conditions should apply during and after the transition period?

Summary of ITC^ DeltaCom position:

Based on BellSouth's interpretation of the TRRO, ITC^DeltaCom cannot add a line to an existing customer nor could it merge another CLEC into its customer base without losing the transitional pricing for the embedded base customers. ITC^DeltaCom has proposed language at Exhibit A, Section 10.1-10.2.7.10 regarding the terms and conditions of the transition period as well as the process for transferring embedded UNE-P customers.

Issue 37: UNE-P ConversionsStatement of Issue

What general limitations apply to BellSouth during the transition period from March 11, 2005 through March 11, 2006?

Summary of ITC^ DeltaCom position:

ITC^DeltaCom has proposed language regarding the transition period is at Exhibit, Section 10.

Issue 38: True-up PaymentsStatement of Issue

If the TRA orders a true-up of the transitional rates, should ITC^DeltaCom be permitted to pay the true-up amounts over a reasonable time period?

Summary of ITC^DeltaCom position:

Yes. To require otherwise would place an undue burden on ITC^DeltaCom. ITC^DeltaCom seeks a reasonable period of time to make payments if a true up is required. This Authority permits end users to pay back past due amounts over an equal period of time in the case of underbilling. Similar flexibility is appropriate here.

Issue 39: EELsStatement of Issue

What terms and conditions should apply with regard to the availability of EELs? What qualifies as a “reverse collocation” for purposes of Paragraph 605 of the TRO? What EEL configurations is BellSouth required to provide? Is BellSouth required to provide a DS0 EEL? What are the business rules/regulations for obtaining a DS0 EEL? What are the business rules relating to ordering an EEL under the new Service Eligibility Criteria? What should be the terms and conditions of the audit? How long does ITC^DeltaCom have to keep records supporting the Service Eligibility Criteria for High Capacity DS1/DS3 EELs?

Summary of ITC^DeltaCom position:

ITC^DeltaCom has provided to BellSouth diagrams and a description of the loop and/or transport configurations it seeks. The documentation provided to Bellsouth is attached as confidential Exhibit B to this Petition. BellSouth has not provided a response.

ITC^DeltaCom has included language that incorporate the TRO provisions on EELs. ITC^DeltaCom has requested information on how to order under the new TRO provisions. Because ITC^DeltaCom does not know the new business rules and has not been able to place orders for EELs under the new TRO Service Eligibility Criteria, ITC^DeltaCom is not able to raise any issues or concerns regarding BellSouth's implementation of these requirements. ITC^DeltaCom seeks information as to how it will be able to order these EELs. For example, BellSouth currently has several reverse collocations with ITC^DeltaCom (See Attachment 3 of the parties current Agreement). These sites should qualify as a "reverse collocation" as outlined by the FCC in the TRO. Additionally, ITC^DeltaCom seeks rational audit language and a specified time period for retention of records. ITC^DeltaCom proposed 18 months as the retention period.

55.

Issue 40: Dedicated Transport and Dark Fiber

Statement of Issue

On what terms and conditions should BellSouth be required to provide dedicated transport and dark fiber transport to ITC^DeltaCom?

Summary of ITC^ DeltaCom position:

There are multiple issues related to federal transport and dark fiber transport. ITC^DeltaCom seeks to include language regarding the transition period, migration process away from BellSouth to

ITC^DeltaCom or an ACP, as well as the ability to audit BellSouth's non-impairment list, among other issues. Language regarding this issue is at Section 12.5 –12.5.25. 9.3; 12.7-12.7.5 of Exhibit A.

56.

Issue 41: Database

Statement of Issue

Should Section 271 elements including database access be included in the Agreement?

Summary of ITC^ DeltaCom position:

Yes. Consistent with Issue 1 of this Petition, ITC^DeltaCom seeks to include rates, terms and conditions for OS/DA, signaling and other database access required by Section 271 of the Act. Language is at Sections 14, 15, 16, 17, & 18.

57.

Issue 42: Tandem Switching

Statement of Issue

Should tandem switching be required as part of transition of UNE-P? Should tandem switching be required as a 271 element and included in this Agreement?

Summary of ITC^ DeltaCom position:

Yes. UNE-P provided under the transition period should include tandem switching. However, as a 271 element, local switching which includes tandem switching should be included in this Agreement.

Issue 43: Pick and Choose

Statement of the Issue:

What language should be incorporated into the Agreement concerning the FCC's Pick and Choose Order?

Should BellSouth be required to file Commercial Agreements with the TRA? Should BellSouth be required to notify ITC^DeltaCom of the latest available rates, terms and conditions pursuant to a Most Favored Nations Clause? If BellSouth does not provide ITC^DeltaCom information related to the latest available offer, how can ITC^DeltaCom be assured that BellSouth is acting in a nondiscriminatory manner?

Summary of ITC^DeltaCom Position:

ITC^DeltaCom provided to BellSouth a redline of its proposed language concerning the Pick and Choose Order on Oct. 13, 2004. ITC^DeltaCom's draft response references the state of North Carolina but is intended for all states. ITC^DeltaCom has not received any comments from BellSouth in response.

ITC^DeltaCom submits that Commercial Agreements should be filed with the TRA. Information such as the carrier signing the agreement can be redacted. BellSouth is filing Commercial Agreements in some states but not in Tennessee. ITC^DeltaCom also seeks to have a Most Favored Nations clause that would ensure that ITC^DeltaCom is not discriminated against and has access to the most recent available rates, terms and conditions. Language is attached hereto as Exhibit C.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, pursuant to the Agreement and state and federal law, the TRA should appoint a mediator to facilitate settlement of the unresolved issues described above and any other issues that may arise during the course of further negotiations between the parties. For issues upon which the parties remain at an impasse after such mediation, the TRA should make findings of fact and conclusions of law.

Respectfully submitted,
BOULT, CUMMINGS, CONNERS & BERRY, PLC

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Guy Hicks
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Nashville, TN 37201-3300

on this the 1st day of July 2005.


Henry M. Walker KG